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Guide to Terms Used:

Yes / No	Item is explicitly addressed in statutes
Presumably	Item not explicitly addressed, but can be inferred, to a high degree of certainty, from the language of the statute.
Not specified, but presumably	Item not explicitly addressed, but can be inferred from language of the statute.
Not Specified	Item not addressed in statute.
N/A	Not applicable.

States that have enacted audit-immunity laws as of September, 1997

Region I: New Hampshire, Rhode Island

Region II: New Jersey

Region III: Virginia

Region IV: Kentucky, Mississippi, South Carolina

Region V: Michigan, Minnesota, Ohio

Region VI: Texas

Region VII: Kansas

Region VIII: Colorado, Montana, South Dakota, Utah, Wyoming

Region IX: Nevada

Region X: Alaska, Idaho

States that have proposed audit-immunity laws as of September, 1997

Region I: Maine, Massachusetts

Region II: New York

Region III: Delaware, Pennsylvania, West Virginia

Region IV: Alabama, Florida, Georgia, North Carolina, Tennessee,

Region V: Wisconsin

Region VI: Louisiana, Oklahoma,

Region VII: Iowa, Missouri, Nebraska,

Region VIII: None

Region IX: California, Hawaii

Region X: None

States that have neither proposed nor enacted audit-immunity laws as of September, 1997

Region I: Connecticut, Vermont

Region III: Maryland

Region V: Illinois, Indiana

Region VI: Arkansas, New Mexico

Region VIII: North Dakota

Region IX: Arizona

Region X: Oregon, Washington

Environmental Audit Immunity Laws: A State-by-State Comparison*

Introduction:

In the past several years a number of states have passed legislation providing for a qualified privilege for environmental audit reports and the documents associated with the preparation of the reports.¹ As of September 1997, 20 states have also passed legislation that

* John A. Lee, B.S. University of Wisconsin - Madison (1985), M.S. University of Wisconsin - Madison (1988), J.D. candidate DePaul University College of Law (1997).

Bertram C. Frey, B.A. Haverford College (1969), J.D. Washington University School of Law (1974). Mr. Frey currently is Acting Regional Counsel for EPA Region V, Chicago.

The views expressed in this article are those of the authors and are not necessarily those of the EPA.

¹ As of April, 1997, Alaska (Ak. Statutes Sec. 09.25.450 to .465), Arkansas (Ark. Code Ann. 8-1-301 - 8-1-312(1995)), Colorado (Colo. Rev. Stat. 13-25-126.5 (1995)), Idaho (1995 Idaho Sess. Laws 359), Illinois (Ill. Rev. Stat. Ch. 415, para 5/52.2 (1995)), Indiana (Ind. Code Ann. 13-10-3-1 - 13-10-3-12 (1995)), Kansas (1995 Kansas Sess. Laws 204), Kentucky (Ky. Rev. Stat. Ann. 224.01-040 (1995)), Michigan (Mich. Comp. Laws 324.101 - 90106 Part 148 (1996)), Minnesota (1995 Minn. Laws 168), Mississippi (Miss. Code Ann. 49-2-71 (1995)), Nevada (Title 40, Nev. Revised Statutes, Sec. 1, 11-12), New Hampshire (1996 N.H. Laws 4), Ohio (Ohio Rev. Code 3745.70 - .73 (1996)), Oregon (Or. Rev. Stat. 468.963 (1995)), South Carolina (1996 S.C. Code Sec. 2, Ch. 57, Title 48), South Dakota (1996 S.D. S.B. 24), Texas (1995 Tex. Gen. Laws 219), Utah (Utah Code Ann. 19-7-103 - 19-7-107 (1995)), Virginia (Va. Code Ann. 10.1-1198 (1995)), and Wyoming (Wyo. Stat. 35-11-1105 - 1106 (1995)) have passed environmental audit privilege laws.

Some states have even extended the privilege to include a testimonial privilege for the owner or operator of the facility who performs or has the audit performed, and the employees and anyone else associated with the audit. For example, Kansas, Michigan, South Carolina, Texas, and Virginia provide that persons associated with the audit can not be compelled to testify, Colorado provides that an employee may not be examined without the consent of the holder of the privilege or unless ordered to do so by a court, while Ohio forbids an employee to testify about an audit without the permission of the owner or operator of the facility. Illinois' law prohibits examination, as to the environmental audit or audit report, of the following persons: the owner or operator who performs or directs the audit, an officer or employee involved with the audit, or any consultant hired for the purpose of performing the audit.

provides for penalty immunity for violations discovered through an environmental audit, while another 19 states have proposed such legislation.² While many articles have been written concerning the privilege side of the environmental audit legislation,³ in comparison few have addressed the provisions in state legislation that provide for penalty immunity.⁴ This paper focuses on environmental audit immunity legislation, and provides a lengthy synopsis of the provisions of such legislation enacted as of September 1997. It does not address either the desirability of having such legislation or the problems associated with these laws.⁵ Instead, it attempts to summarize and categorize the provisions contained in each law, and by placing the analysis in table format, allows a comparison of the provisions contained in the different states' laws. This format should provide a handy reference for the practitioner grappling with these laws and the nuances contained within them.

Because of the oversight role the United States Environmental Protection Agency (EPA) plays in the approval and monitoring of federally delegated state environmental programs,⁶ and because many of the states' laws provide for immunity for violations of laws within those federally

² See accompanying chart for the relevant states and the statutory cites to the legislation. Alabama, California, Delaware, Florida, Georgia, Hawaii, Iowa, Louisiana, Massachusetts, Maine, Missouri, North Carolina, Nebraska, New York, Oklahoma, Pennsylvania, Tennessee, West Virginia and Wisconsin have introduced audit immunity laws as of September 1997.

³ A recent search on Westlaw produced 75 related articles. See for example, Goldsmith and King, *Policing Corporate Crime: The Dilemma of Internal Compliance Programs*, 50 Vand. L. Rev. 1 (1997), and Sorenson, *Comment: The U.S. Environmental Protection Agency's Recent Environmental Auditing Policy and Potential Conflict with State-Created Environmental Audit Privilege Laws*, 9 Tul. Env'tl. L. J. 483, (1996).

⁴ As a recent example see Spicer, *Turning Environmental Litigation on its E.A.R.: The Effects of Recent State Initiatives Encouraging Environmental Audits*, 8 Vill. Env'tl. L.J. 1 (1997).

⁵ See, for example Johnston, *An Essay on Environmental Audit Privileges: The Right Problem, the Wrong Solution*, 25 Env'tl. L. 335 (1995), for a discussion of problems with immunity legislation. See also, Cushman, *Laws to Guard Environment are Skirted, Groups Assert*, The New York Times, Thursday January 30, 1997, p. A10.

⁶ For example, the Clean Water Act (33 U.S.C.A. Sec. 1251 - 1387), and the Clean Air Act (42 U.S.C.A. Sec. 7401-7671q).

delegated state programs, the tables are organized along EPA regional boundaries.⁷

The tables are divided into three main sections: (A) General Statutory Provisions, (B) Immunity: General Applicability, and (C) Exceptions to Immunity. Also included is a small section on states' issues. In the section entitled "General Statutory Provisions", the statutory citations and effective dates are given, along with a subsection on the meaning of the term "voluntary" as associated with an environmental audit. Most states require a violation to be voluntarily disclosed before any penalty immunity will be applicable.⁸ Only nine of the 16 states specify who has the burden of proving that the disclosure is voluntary,⁹ and 11 of the 16 specify the elements of a prima facie case for "voluntariness".¹⁰ Only three states, New Jersey, Rhode Island and South Carolina, do not require the identification of the violation to have come from an environmental audit.

The section entitled "Immunity: General Applicability" discusses to whom the penalty immunity applies and the extent of the immunity given. Most states provide immunity from administrative and civil penalties,¹¹ while eight states provide some immunity or mitigation for

⁷ The EPA regional state breakdown is as follows: Region I - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Region II - New Jersey, New York, Puerto Rico, Virgin Islands. Region III - Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Region IV - Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. Region V - Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Region VI - Arkansas, Louisiana, New Mexico, Oklahoma, Texas. Region VII - Iowa, Kansas, Missouri, Nebraska. Region VIII - Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Region IX - Arizona, California, Hawaii, Nevada, American Samoa, Guam. Region X - Alaska, Idaho, Oregon, Washington.

⁸ The only exceptions are New Jersey and Minnesota. See Tables I and II.

⁹ Alaska, Colorado, Idaho, Kansas, Michigan, Nevada, Ohio, South Carolina and Texas specify who has the burden, but Alaska and Idaho do not specify the standard of proof for rebuttal.

¹⁰ Virginia, South Carolina, Kentucky, Michigan, Ohio, Texas, Kansas, Colorado, Nevada, Alaska and Idaho specify the elements.

¹¹ The exceptions are Kentucky, South Dakota, and Utah for administrative penalties. Every state provides immunity from civil penalties except Mississippi, which does not provide complete immunity for any category of penalties, only penalty reduction. Rhode Island will not refer the regulated entity to an appropriate prosecuting authority for civil penalties if the entity is

criminal acts.¹² Only Wyoming provides immunity from injunctive relief, subject to certain exceptions.¹³ In various combinations, states provide immunity from violations of administrative orders and consent decrees, civil judicial orders and consent decrees, permit provisions, and certain environmental laws and regulations. Every state requires that remedial actions be taken before immunity applies, but only some states require proof that any corrective action was actually taken or require the regulated entity to undertake steps to prevent recurrence of the violation for which immunity is sought.¹⁴

The section entitled “Exceptions to Immunity” summarizes the provisions in each states’ laws that preclude the granting of immunity. For example, only four of the 20 states withhold immunity if the disclosed violation results in an economic benefit to the violator,¹⁵ while six states could presumably provide some immunity even if the violations are required to be reported.¹⁶ A major category of immunity exceptions concerns the previous occurrence of civil, administrative or criminal environmental violations, with the states’ laws differing on how a previous environmental violation affects a request for immunity for a current violation.

Immunity can be withheld based on scienter, the seriousness of the violation, and the potential for harm. For example, most of the laws presumably provide immunity for a civil violation either negligently or recklessly committed, but withhold immunity if the violations are

in compliance with the terms of a required consent order.

¹² New Hampshire, Rhode Island, Michigan, Kansas, Colorado, South Dakota, Nevada and Idaho provide some immunity for criminal acts. Rhode Island will not refer the regulated entity to an appropriate prosecuting authority for civil penalties if the entity is in compliance with the terms of a required consent order. Nevada provides for mitigation of criminal penalties only, not immunity.

¹³ See Table III.

¹⁴ Only Rhode Island, New Hampshire, New Jersey, South Carolina, Minnesota and Montana require proof of corrective action, while Rhode Island, New Hampshire, Kentucky, Minnesota, Montana, Utah, Nevada and Alaska require steps to prevent recurrence of the violation.

¹⁵ Mississippi, Utah, Montana and Alaska. In Nevada, the presumption of immunity is rebutted to the extent a significant economic benefit occurred as a result of the violation.

¹⁶ New Jersey, Michigan, Minnesota, Texas, Kansas and Nevada.

intentionally or knowingly committed.¹⁷ More controversial though are state provisions granting immunity where the disclosed violation is criminal and recklessly or intentionally committed.¹⁸ Some states provide immunity if the disclosed violation is serious or caused imminent or substantial endangerment.¹⁹ Immunity can also be withheld if there is a pattern of environmental violations.²⁰

Nine states provide for some type of penalty mitigation if immunity does not apply.²¹ Lastly, many of the immunity statutes contain sunset provisions.

¹⁷ New Jersey, Texas, Utah, Wyoming, Montana, Nevada and Alaska do not provide for immunity if the violation was recklessly committed.

¹⁸ Minnesota, Kansas, South Dakota, and Idaho presumably will extend immunity for criminally reckless violations, while Idaho will presumably extend it even for intentionally committed violations.

¹⁹ Virginia, Michigan, Ohio, Colorado, Wyoming, Idaho and Alaska will provide some immunity for serious violations, while Michigan, Ohio, Kansas, Colorado, South Dakota, and Wyoming might provide immunity for imminent and substantial endangerment. In Nevada, the presumption against civil or administrative liability is rebutted to the extent it is established that the violation is serious or presents an imminent or substantial danger.

²⁰ In New Hampshire, Rhode Island, New Jersey, Kentucky, Texas, South Dakota, Montana and Alaska immunity does not apply when environmental violations constitute a pattern. Additionally, in Michigan, Colorado, Wyoming, and Idaho, immunity does not apply if there is a pattern of serious environmental violations.

²¹ South Carolina, Mississippi, Michigan, Minnesota, Texas, Wyoming, Utah, Nevada and Alaska.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
A: GENERAL STATUTORY PROVISIONS							
Immunity Statute	N.H. Code Ch. RSA 147-E:9 (1996 NH ALS 4)	General Laws of Rhode Island, 10-20.1-1 to 10-20.1-5	Title 13 Rev. N.J. Stat. (1995 NJ ALS 296)	Sec 10.1-1194 Code of Va (1995 VA ALS 564)	Sec. 48-57-100 Code of S.C.	K.R.S. 224.01 - 040	Ms. Code of 1972 Sec. 49-2-51 and 49-2-2. ² (1995 MS ALS 627)
Effective Date	July 1, 1996	July 1, 1997	December 22, 1995	March 24, 1995	June 4, 1996	July 15, 1996	July 1, 1995
	Voluntary defined						
Does immunity depend on voluntary disclosure?	Yes	Yes	No ³	Yes	Yes	Yes	Yes

¹ (New Jersey) Additionally (A.B. 273 and S.B. 384), both introduced on 1/1/96, are environmental audit immunity bills.

² (Mississippi) Under Section 49-2-51, Mississippi Code of 1972, in assessing penalties for Section 17-17-29 (Covers violations of sections 17-17-1 through 17-17-47); Section 49-17-43 (Covers violations of Sections 49-17-1 through 49-17-43); and Section 49-17-427, the Mississippi Commission on Environmental Quality shall consider, at a minimum, a number of factors, including, whether compliance was discovered and reported as a result of a voluntary self-evaluation. If so, penalties can be **REDUCED** (NOT complete immunity) to a de minimis amount, subject to the conditions outlined in the chart.

³ (New Jersey) Immunity for MINOR (as defined in Sec. 5 of the Act) violations only. For minor violations not voluntarily disclosed a penalty will be imposed if compliance is not achieved within the period of time specified in the notice of violation (Sec. 3a).

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Voluntary disclosure to whom?	Dept. of Environmental Services	The Department	Dept. of Environmental Protection or local govt. agency	State or local regulatory agency	Agency having regulatory authority over disclosed violation	“The Cabinet”	Ms. Dept of Env. Quality or Ms. Commission on Env. Quality
Voluntary disclosure within what time period?	Within 30 days of discovery	Within 15 days (or shorter period if provided by law) from employer’s receipt of audit	Within 30 days of discovery	Promptly after knowledge of violation obtained	14 days following reasonable investigation	Prompt reporting of voluntary discovery of violation	Promptly after knowledge of violation obtained
Form the voluntary disclosure must take?	Contents of report to Department are specified	In writing	Not specified	Not specified	Not specified	Not specified	Not specified
Who has burden for proving or disproving that disclosure was voluntary ?	Not specified	Not specified	Not specified	Not specified	“The government entity”	Not specified	Not specified
Standard of proof for rebuttal of presumption that disclosure was voluntary?	N/A	N/A	N/A	N/A	To the satisfaction of the court or administrative law judge	N/A	N/A

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Elements of prima facie case for “voluntary” specified?	No	No	No	Yes	Yes	Yes	No
	Environmental Audit Requirements						
Must the knowledge of the violation have come from an environmental audit/assessment?	Yes	No ⁴	No	Yes	No	Yes	Yes
Must audit be completed within a specified time?	6 months from date of commencement	No	N/A	No	If audit occurs, it must have a specified beginning and end date	No	No

⁴ (Rhode Island) The violation can be discovered through an environmental audit, as defined in the Act, or else through a systematic procedure that reflects the regulated entity’s due diligence (as defined in the Act) in preventing, detecting and correcting violations. The regulated entity must provide accurate and complete documentation to the Department to show how it exercises its due diligence.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Good faith standard for environmental audit performance ?	No	No ⁵	N/A	Yes ⁶	No	No	Yes
Good faith standard for environmental audit disclosure ?	No	No	N/A	Yes ⁶	No	No	Not specified
Does immunity apply if audit report fraud or misrepresentation occurs?	No. Immunity does not apply if any of the reports submitted to the Department prove not to be true.	Not specified, but presumably No. The regulated entity must cooperate with the Department and provide such information as necessary to determine applicability of Act	Presumably No. There must be full disclosure of all relevant circumstances surrounding the violation for immunity to apply.	No	Not specified, but presumably No. Person or entity making the disclosure must cooperate with appropriate agency in investigation of disclosed issues.	Not specified, but presumably No. Owner/operator of facility must cooperate with Cabinet and provide information necessary to determine applicability of the Act	No, good faith standard for self-evaluation

⁵ (Rhode Island) There is a due diligence standard that encompasses the regulated entity’s systematic efforts to **detect** violations. The environmental audit is a systematic review by the regulated entity of the facility’s operations [(Rhode Island) and occupational practices] related to **meeting** environmental requirements.

⁶ (Virginia) The relevant part of the Virginia statute states: ‘Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith’ It is not clear from the wording if the ‘bad faith’ requirement extends beyond the act of either producing or disclosing the environmental audit itself.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Uninterrupted or continuous auditing specifically prohibited?	No	No ⁷	No	No	No, but the investigation must be 'reasonable'	No	No
Does immunity depend on notification that an environmental audit was to take place?	No	Yes, notice of the anticipated start date of the audit must be filed with the Department	No	No	No	No	No
B: IMMUNITY: GENERAL APPLICABILITY							
To whom does immunity apply?	Any person (as defined) who owns/operates a facility, or conducts activities regulated under environmental law.	The regulated entity, which includes a Federal, state or municipal agency or facility regulated under Federal or State environmental laws	Any person (as defined in Act)	Any person	A person or entity	"A facility"	The person making the disclosure

⁷

(Rhode Island) In addition, an environmental audit is a periodic review by the regulated entity.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Is Immunity Provided from:	Extent of Immunity Provided						
(A) Administrative penalties?	Yes	Yes, the Department will not assess “gravity-based” penalties ⁸	Yes	Yes	Yes	No	Reduction ONLY ⁹
(B) Civil penalties?	Yes	Yes ¹⁰	Yes	Yes	Yes	Yes	No ⁹
(C) Criminal penalties?	Yes	Yes ¹⁰	No	No	No	No	No ⁹
(D) Injunctive relief?	No	No	No	No	No	No	No ⁹

⁸ (Rhode Island) A “Gravity-based penalty” is any portion of a penalty over and above an entity’s economic gain resulting from noncompliance with any statutes administered by the department. The Department may forgive the entire gravity-based penalty for violations that meet the conditions of Sec. 10-20.1-4 and, **in the opinion of the Department**, do not merit any penalty due to an insignificant economic benefit from the violation.

⁹ (Mississippi) Only those penalties determined by the Mississippi Commission on Environmental Quality (except for economic benefit) will be reduced to a de minimis amount, if the requirements of the statute are met. See, supra note 1.

¹⁰ (Rhode Island) The regulated entity will not be referred to the appropriate prosecuting authority for a civil or criminal action if the entity is in compliance with the terms of the required consent order (See Section C, “Consent Decrees”) and Sec. 10-20.1-4 of the Act.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(E) Other actions?	No	No	No	No	No	No	No ⁹
Is Immunity Provided for a Violation of:							
(A) Administrative orders?	No	No	No ¹¹	Yes	No	No	Yes
(B) Administrative consent decrees?	No	No	No ¹¹	No	No	No	Yes
(C) Civil Judicial orders?	No	No	No ¹¹	No	No	No	Yes
(D) Civil Judicial consent decrees?	No	No	No ¹¹	No	No	No	Yes
(E) Permit provisions?	Yes, permits and licenses issued under environmental laws	Yes, if issued under a Federal or State environmental statute that the Department administers	Yes, permits issued under environmental laws listed in the statute.	Yes	Yes, if issued under environmental laws.	Yes, if issued under K.R.S. 224 or the administrative regulations promulgated pursuant thereto.	Yes

¹¹ (New Jersey) The activity or condition constituting the violation can NOT have existed for more than 12 months prior to date of discovery.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
From which laws, statutes, rules, or regulations is immunity provided?	Environmental laws (specified in definitions section of Act) ¹²	All Federal and State environmental statutes that the Department administers	MINOR (as defined) violations of environmental laws (as listed in the statute) or any rules promulgated thereunder ¹¹	Environmental statutes and regulations,	Federal, State, regional and local laws, regulations and ordinances pertaining to environmental matters	“Violations of this chapter (K.R.S. 224), or administrative regulations pursuant theretofore”	Federal, State, or local statutes, rules or regulations, or any issuances in pursuance thereof.
Any enumerated exclusions to provided immunity?	Nothing in Act prevents State from initiating a compliance action against a regulated entity for any disclosed or discovered violation	No	Authority remains to seek damages, injunctive relief, to initiate a criminal investigation, or to obtain other appropriate relief	Act does not bar institution of civil action against an owner or operator for compensation for injury to person or property	No immunity from criminal penalties. Also, if full compliance not certified, the Department retains discretion to assess penalties.	(1) Recovery of actual damages resulting from violations still permitted. (2) No immunity if penalty mitigation already received from a Federal, State, or local agency.	Any provisions of the immunity section regarding liability for costs of clean-up, etc of pollution or hazardous or solid waste is limited as provided in Sec. 49-17-42 and rules adopted thereto.
May penalties be assessed before a final determination that disclosure was voluntary?	Presumably No	Presumably No	Presumably No	Not specified	No	Not specified	Not specified
Remedial Actions							

¹² (New Hampshire) RSA 125-C, 125-D, 125-I, those portions of 141-E, implemented by the Department of Environmental Services, RSA-A, RSA 146-C, 147-B, 149-M, RSA 481, 482, 483-B, 485, 485-A, 485-C, and RSA 487.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Must the owner/operator take remedial action for immunity to apply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Must nature of remedial action be specified to regulatory agency?	Yes	No, but Department determines if appropriate measures have been taken to remedy any harm due to the violation	No	Yes	No, but full compliance must be certified by the Department.	No	No
Time frame for remedial action to occur?	As soon as practicable within 90 days; if incapable within 90 days, then in accordance with negotiated agreement with Department.	Within 60 days from date violation disclosed. If more that 60 days is needed, Department must be notified in writing before elapse of original 60 day period	Between 30 and 90 days based on nature of violation. Department can extend/contract the time range	In a diligent manner in accordance with a compliance schedule submitted to regulatory agency	Violation must be corrected in a 'diligent' manner. Full compliance must be certified by the Department as occurring in a reasonable time.	60 days, unless a shorter time is necessary to protect health, safety or environment; Longer time upon approval of Cabinet	Corrective action must be pursued with 'due diligence'
Good faith or Due diligence standard for remedial action?	Absent good cause shown, remedial actions must be appropriate and implemented in accordance with the statute.	Yes, a due diligence standard (as defined in Act) encompasses the regulated entity's efforts to prevent, detect, and correct violations	Not specified	Presumably yes ¹³	Yes	Not specified	Yes

¹³ (Virginia) See supra note 6.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Proof that corrective action was taken required as a follow up?	Yes, report to Dept within 10 days of completion of remedial action	Yes, the regulated entity must certify in writing that the violation was corrected	A written verification that compliance achieved may be required.	No	Compliance must be certified by the Department.	No	No
Is regulated entity required to undertake steps to prevent the recurrence of violation?	Yes, absent good cause shown, prevention measures must be adequate and implemented in accordance with the statute.	Yes, the regulated entity must agree in writing to take steps to prevent recurrence	No	No	No	Yes, owner must agree in writing to take steps to prevent recurrence	No
C: EXCEPTIONS TO IMMUNITY							
Does Immunity Apply When:	Disclosed Violations: General Issues						
(A) Injunctive relief has been granted due to violation?	Presumably yes	Presumably yes	Presumably yes	Presumably yes	Presumably yes	Presumably yes	Yes
(B) Violation results in an economic benefit or competitive advantage for the violator?	Yes	Yes. Immunity is for penalties over and above regulated entity's economic gain	Yes	Yes	Yes	Yes	No

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(C) Violations are required to be reported?	Not specified	No ¹⁴	Presumably yes. (Violations do not have to be voluntarily reported).	No	No	No	No
(D) Violation is either under investigation / or discovered by an enforcement agency before it is reported?	No	No. Violation must be discovered and disclosed before it is under investigation or discovered by or subject to imminent discovery by a regulatory agency	Presumably yes / Yes, unless violation has existed for more than 12 months prior to discovery	Not specified	Not specified	No ¹⁵	Not specified / No

¹⁴ (Rhode Island) Examples supplied of violations required to be reported include: (1) Emissions violations detected through a required continuous emission monitor (or alternative monitor established in a permit); (2) Violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring; and (3) Violations discovered through a compliance audit required to be performed by the terms of an administrative or court order or settlement agreement.

¹⁵ (Kentucky) The disclosure must also occur prior to: (1) The filing of a citizen's suit under Federal or State law; (2) The filing of a complaint by a third party; (3) A report to a Federal, State or local agency of the violation, by an employee not authorized to speak on behalf of the facility; or (4) The imminent discovery of the violation by a regulatory agency.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(E) Violation is reported after an inspection or information request by federal, state, or local agency?	No	No ¹⁶	Presumably yes	Not specified but presumably yes	Not specified but presumably yes	No	Not specified but presumably No
	Previous Violations:						
Specific exception to immunity when, before voluntary disclosure:	Civil and Administrative						

¹⁶ (Rhode Island) In addition, there must be discovery and disclosure before: (1) Notice of a citizen’s suit; (2) The filing of a complaint by a third party; or (3) The reporting of the violation by a “whistle blower” employee.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(A) A previous environmental violation had occurred?	No	Yes, if penalty mitigation was previously received from the EPA or Department or local agency, or if violation was identified in a judicial or administrative order or consent agreement, or otherwise documented by the Department or EPA, including a conviction or plea agreement.	Yes, if part of a pattern and not an isolated incident	No	Yes, if immunity was granted for the prior violation	Yes	No, but past performance history considered by Commission
(B) Previous environmental violation resulted in a compliance action?	Yes	Yes, if penalty mitigation was previously received from the EPA or Department or local agency, or if violation was identified in a judicial or administrative order or consent agreement, or otherwise documented by the Department or EPA, including a conviction or plea agreement.	Yes	No	N/A	N/A	No, but past performance history considered by Commission
(C) Compliance action resulted in imposed penalty?	Yes	Yes, if penalty mitigation was previously received from the EPA or Department or local agency, or if violation was identified in a judicial or administrative order or consent agreement, or otherwise documented by the Department or EPA, including a conviction or plea agreement.	N/A	No	N/A	N/A	No, but past performance history considered by Commission
Must the previous occurrence, action or penalty have concerned a same/similar violation as one voluntarily disclosed?	Yes, unless violation is part of a pattern, then No.	Yes, unless part of a pattern, then No.	Yes (Includes violation of the same permit requirement).	N/A	Yes	Yes	N/A

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Must the previous occurrence, action or penalty have concerned the same facility as the violation voluntarily disclosed?	No	Yes, unless part of a pattern, then No.	Yes (For a violation not involving a permit) ¹⁷	N/A	Yes	Yes	N/A
Time-frame for previous occurrence, action or penalty to affect immunity?	3 years before discovery of violation	Past 3 years, or past 5 years if part of a pattern	12-month period preceding violation	N/A	1-year	Past 3 years	N/A
Specific exception to immunity when, before voluntary disclosure:	Criminal						

¹⁷ (New Jersey) For the “Coastal Area Facility Review Act”, the “Freshwater Wetlands Protection Act”, the “Wetlands Act of 1970”, and the “Flood Hazard Area Control Act”, or any rules or regulations promulgated thereunder or permit issued pursuant thereto, the violation could be at any site.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(A) An environmental criminal act had occurred?	Yes	Yes, if penalty mitigation was previously received from the EPA or Department or local agency, or if violation was identified in a judicial or administrative order or consent agreement, or otherwise documented by the Department or EPA, including a conviction or plea agreement.	No, (because exceptions for similar violations, and no immunity for disclosed criminal violations).	No	No, (because exceptions for similar violations, and no immunity for disclosed criminal violations).	No, (because exceptions for similar violations, and no immunity for disclosed criminal violations).	No, but past performance history considered by Commission
(B) Previous environmental criminal act resulted in a compliance action?	N/A	Yes, unless part of a pattern, then No.	N/A	No	N/A	N/A	No, but past performance history considered by Commission
Must the previous criminal act or enforcement action have concerned the same or similar violation as the one voluntarily disclosed?	No	Yes, unless part of a pattern, then No.	N/A	N/A	N/A	N/A	N/A
Must the previous criminal act or enforcement action have concerned the same facility as the violation voluntarily disclosed?	No	Yes, unless part of a pattern, then No.	N/A	N/A	N/A	N/A	N/A

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Time-frame for previous criminal act or enforcement action to affect immunity?	3 years preceding discovery of violation	Past 3 years, or past 5 years if part of a pattern	N/A	N/A	N/A	N/A	N/A
	State of Mind; Scienter						
Does Immunity Apply When Violation was:	Civil Violations						
(A) Negligently committed?	Presumably yes	Presumably yes	Presumably Yes	Presumably yes	Presumably yes	Presumably yes	Presumably yes
(B) Recklessly committed? ¹⁸	Presumably yes	Presumably yes	No	Presumably yes	Presumably yes	Presumably yes	Presumably yes
(C) Reckless with a total disregard for human health or safety? ¹⁵	Presumably yes	Presumably yes for gravity-based penalties / Not specified but presumably No for civil or criminal penalties	No	Presumably yes	Presumably yes	Presumably yes	Presumably yes

¹⁸ Recklessness involves a greater degree of fault than negligence, but a lesser degree of fault than intentional wrongdoing. Reckless is equivalent to gross negligence.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
(D) Intentionally or knowingly committed?	Presumably yes	Presumably yes for gravity-based penalties, but No for civil or criminal penalties	No	Presumably yes	No	Presumably yes	Considered by the Commission
Does Immunity Apply When Violation was:	Criminal Violations						
(A) Criminally negligent?	Yes	Presumably yes	No	No	No	No	No ¹⁹
(B) Criminally reckless? ²⁰	No	Presumably yes for gravity-based penalties / Not specified but presumably No for civil or criminal penalties	No	No	No	No	No ¹⁹
(C) Intentionally or knowingly committed?	No	Presumably yes for gravity-based penalties, but No for civil or criminal penalties	No	No	No	No	No ¹⁹
	Serious / Imminent and Substantial Endangerment						

¹⁹ (Mississippi) See supra note 9.

²⁰ Gross negligence so extreme that it is punishable as a crime.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does immunity apply when a violation is serious ?	No	No	No	Yes, though civil action for compensation allowed if serious violation	No	No	Presumably No
Is serious defined?	No	No	A greater than minimal risk to public health, safety, and natural resources	Injury to person or property	Significant environmental harm or public health threat	No	No
Is definition of serious implicit or explicit in statute/law?	N/A	N/A	Implicit	Implicit	Implicit	N/A	N/A
If serious not defined, within what context is term used?	“Serious harm to human health or environment”	“Serious actual harm”	N/A	N/A	N/A	“Serious actual harm”	The Commission shall “Consider the seriousness of the violation, including harm to environment and hazard to health and safety of public”

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does immunity apply if violation caused imminent and substantial endangerment?	Not specified but presumably No. ²¹	No	Not specified but presumably No ²¹	Not specified but presumably No ²¹	Not specified but presumably No ²¹	No	No
Is imminent and substantial endangerment defined?	N/A	No	N/A	N/A	N/A	No	No
Imminent and substantial endangerment to what?	N/A	Human health or environment	N/A	N/A	N/A	Human health or environment	The public health, safety or welfare of the environment
	Pattern of Environmental Violations						
Does immunity apply when violations constitute a pattern ?	No	No	No	Presumably yes ²²	Presumably yes	No	Presumably yes, but past performance history considered by the Commission

²¹ (New Hampshire, New Jersey, Virginia, South Carolina) Although **imminent and substantial endangerment** is not addressed in the statute, there is no immunity for a serious violation, and a violation causing imminent and substantial endangerment might be considered a serious violation. **Serious** is not explicitly defined in the statute.

²² (Virginia) See supra note 6. It is unclear if a pattern of violations could be considered ‘bad faith’.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
What constitutes a pattern ?	“Multiple compliance actions or penalty actions for violations of any environmental law”. Multiple violations per se do not constitute a pattern	‘Pattern’ is not defined, but it must be a pattern of Federal, State, or local violations by the facility’s parent organization .	Same or substantially similar violations that are not isolated incidents	N/A	N/A	Identified violations of Federal, State or local laws	N/A
Within what time frame is a pattern established?	Within 3 years preceding discovery of violation	Within the past 5-years	At any time	N/A	N/A	Within the past 5 years	N/A
Does ‘ pattern ’ require the violation at issue or one substantially similar to have been repeated?	No	No	Yes	N/A	N/A	No	N/A
Must violations have occurred at the same facility?	No	No	No	N/A	N/A	No	N/A

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does pattern of violations include multiple settlement agreements related to the same alleged violation?	No	Yes (The settlement agreements do not have to relate to the same violation)	Presumably yes	N/A	N/A	Yes	N/A
Does pattern of violations include multiple violations of settlement agreements?	No	Presumably yes	Presumably yes	N/A	N/A	Presumably yes	N/A
Consent Decrees							
To achieve compliance, must violator enter into consent decree with regulatory agency after voluntary disclosure?	No, but need agreement with Department for remediation schedule longer than 90-days.	Yes. For civil and criminal violations, the Department will require an administrative consent order	No	No	No, but must cooperate with agency in investigation of issues disclosed and obtain certificate of full compliance by Department	No, but owner/operator of facility must cooperate with Cabinet	No, but person making the disclosure must cooperate with Commission and Department
Does immunity apply if the consent decree required after voluntary disclosure is violated?	N/A	No	N/A	N/A	No, (must cooperate to make disclosure voluntary)	No, (must cooperate for immunity to apply)	No, (must cooperate for penalty reduction to apply)

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does immunity apply if a consent decree has been violated prior to voluntary disclosure?	Presumably yes	No, if violation is part of a pattern	No, if decree is result of previous enforcement action for same/similar violation at same facility within previous 12-month period	Presumably yes	Yes, (but no immunity for violation OF a consent decree)	No, if violation is part of a pattern	Presumably yes, but past performance history considered by the Commission.
Can consent decree still be mandated even with a voluntary disclosure?	Presumably yes if part of compliance action undertaken by State.	Yes, if remediation will take longer than 60-days, the department may require regulated entity to enter into an administrative consent order or judicial consent decree	Not specified	Not specified	Not specified	Not specified	Not specified

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does immunity apply if violation found pursuant to complying with terms of consent decree? ²³	Presumably yes	No	Presumably yes	Yes, unless disclosure required by decree	Yes, unless disclosure required by decree	No	No
Mitigation of Penalties							
Are imposed penalties not subject to immunity, nevertheless subject to mitigation?	Not specified	Not specified, but any act or omission for which regulated entity has previously received penalty mitigation from the EPA or the Department or a local agency is not subject to immunity	Not specified	Not specified	Yes, Dept of Health and Environmental Control retains discretion	Not specified, but acts or omissions for which the facility has received penalty mitigation from a Federal, State or local agency are NOT subject to immunity.	Yes, Act requires mitigation NOT immunity
D: STATE ISSUES							

²³ This question only addresses the preclusion of immunity if violation is found pursuant to complying with the terms of a consent decree. The violator still has to satisfy the State’s specified immunity requirements for immunity to apply.

STATE / REGION	New Hampshire R I	Rhode Island R I	New Jersey R II	Virginia R III	South Carolina R IV	Kentucky R IV	Mississippi R IV
Does immunity apply in case of state primacy, where immunity will result in a state program less stringent than federal program?	Not specified	Not specified	Not specified	Act must be consistent with requirements of Federal law	Not specified	Not specified	Not specified
Statute / law void after certain date? (Sunset provision)	July 1, 2002, unless specifically extended by legislature	No	No	No	No	No	No

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
A: GENERAL STATUTORY PROVISIONS					
Immunity Statute	Mi. Comp. Laws Part 148, Sec. 14801 and 14809 (Sec. 324)	Sec. 115B.8-13 (1996 MN ALS 168)	Sec. 3745.70 and 3745.72 of Rev. code (1996)	TX. Rev. Civ. Stat. Art. 4447cc Sec. 10 (1996)	K.S.A. 60-3338 (1995)
Effective Date	March 8, 1996	June 1, 1995	March 13, 1997	September 1, 1997	July 1, 1995
	Voluntary defined				
Does immunity depend on voluntary disclosure?	Yes	Not specified ¹	Yes	Yes	Yes
Voluntary disclosure to whom?	Appropriate State or local agency	Commissioner of the Pollution Control Agency ²	Director of the State agency that has jurisdiction over alleged violation	“An agency with regulatory authority with regard to the violation disclosed”	Agency with regulatory authority with regard to violation
Voluntary disclosure within what time period?	Promptly after knowledge of violation obtained	Within 45 days after completion of the audit or self-evaluation	Promptly after information of violation obtained by the owner /operator	Promptly after knowledge obtained	Promptly after information disclosed us obtained

¹ (Minnesota) To obtain immunity a facility must qualify for participation in the environmental improvement program. To participate, more than 1-year must have elapsed since the initiation of an enforcement action that resulted in the imposition of a **penalty** involving the facility.

² (Minnesota) The State must defer for at least 90-days any enforcement action against the owner/operator of a facility after a report, meeting the requirements of Sec. 114C.22 is submitted to the Commissioner.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Form the voluntary disclosure must take?	Not specified	Report submitted to Commissioner following listed specifications	In writing, hand delivered or sent by certified mail, and must contain all of the requirements specified in the section.	In writing, by certified mail	Not specified
Who has burden for proving or disproving that disclosure was voluntary ?	The State or local agency; decision by Agency that disclosure was not voluntary is subject to judicial review	N/A	Owner /operator asserting entitlement to immunity has burden of proving that entitlement	Person claiming immunity must make prima facie showing; burden then shifts	Person claiming immunity must make prima facie showing; burden then shifts
Standard of proof for rebuttal of presumption that disclosure was voluntary?	Adequate showing that disclosure was voluntary	N/A	Preponderance of the evidence	Preponderance of evidence; beyond a reasonable doubt in criminal case	Preponderance of the evidence
Elements of prima facie case for “voluntary” specified?	Yes	N/A	Yes	Yes	Yes
	Environmental Audit Requirements				
Must the knowledge of the violation have come from an environmental audit/assessment?	Yes	Yes, Environmental audit or self-evaluation; additional requirements for major facilities (as defined)	Yes	Yes	Yes
Must audit be completed within a specified time?	No	No	No	Within 6-months, unless extension approved	Within reasonable period of time

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Good faith standard for environmental audit performance ?	No	No	Yes, Data, documents, records, or plans necessary to the audit must be collected, made, and maintained in good faith	No	No
Good faith standard for environmental audit disclosure ?	No	No	Yes	No	No
Does immunity apply if audit report fraud or misrepresentation occurs?	Not specified, but presumably No. (Must be good faith effort to achieve compliance.)	No, if a false statement is made in the report. Person found to have knowingly made a false material statement or representation is subject to administrative penalties under Sec. 116.072.	Presumably No, good faith standard for audit report	Not specified, but presumably No. Person making the disclosure must cooperate with appropriate agency in investigation of disclosed issues.	Not specified, but presumably No. Person or entity making the disclosure must cooperate with appropriate agency in investigation of disclosed issues.
Uninterrupted or continuous auditing specifically prohibited?	No	No	No	No	Yes
Does immunity depend on notification that an environmental audit was to take place?	No	No	No	Yes	No
B: IMMUNITY: GENERAL APPLICABILITY					

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
To whom does immunity apply?	The person making the disclosure	The owner or operator of the facility	Owner or operator of facility or property	“Individual, corporation, business trust, partnership, association, any other legal entity”	“Any person or entity”
Is Immunity Provided from:	Extent of Immunity Provided				
(A) Administrative penalties?	Yes	Yes	Yes	Yes	Yes
(B) Civil penalties?	Yes	Yes	Yes	Yes	Yes
(C) Criminal penalties?	Yes, for negligent acts only	Yes	No	No	Yes
(D) Injunctive relief?	No	Yes, a 90 day deferment if proper report submitted, unless to enjoin imminent threat to health or environment	No	No	No
(E) Other actions?	Yes, civil, admin., and criminal (negligent only) fines	Presumably deferred	No	No (Technical or remedial provisions ordered by a regulatory authority)	No
Is Immunity Provided for a Violation of:					

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(A) Administrative orders?	Presumably Yes ³	Yes	Yes, if issued under environmental laws	No	No
(B) Administrative consent decrees?	Presumably Yes ³	Yes	Not specified	No	No
(C) Civil Judicial orders?	Presumably Yes ³	Yes	Yes, if issued under environmental laws	No	No
(D) Civil Judicial consent decrees?	Presumably Yes ³	Presumably yes	Not specified	No	No
(E) Permit provisions?	Presumably Yes ³	Yes, permit issued by agency	Yes	Yes, if issued under environmental health or safety laws	Not specified

³ (Michigan) If **related** to a violation of Art. II and Chapters 1 and 3 of Art. III of Public Act No. 451 of the Public Acts of 1994.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
From which laws, statutes, rules, or regulations is immunity provided?	Specific laws listed, and rules promulgated thereunder ⁴	Laws administered by the agency, or rules adopted by the agency, or local government ordinances under authority of State environmental law	Environmental laws of Ohio, or Federal or local counterparts or extensions ⁵⁵	Federal or state environmental health & safety laws; Rules, regulations, regional or local laws adopted pursuant thereto	Environmental statutes, or rules and regulations promulgated under such statutes
Any enumerated exclusions to provided immunity?	No immunity from criminal penalties or fines for gross negligence; and responsibility to pay damages, correct violations and conduct remediation remains	Act does not preclude State from taking enforcement action for violation discovered by State before report submitted	(1) Payment of (a) Damages for harm to persons, property, or environment; or (b) Reasonable costs incurred by govt. agency in response to disclosure; or (2) responsibility for clean-up of environmental harm.	Technical or remedial provisions ordered by regulatory authority	No

⁴ (Michigan) See supra note 3 for listed laws.

⁵ (Ohio) Environmental laws means Sections 1511.02 and 1531.29, Chapters 3704, 3745, 3746, 3750, 3751, 3752, 6109, and 6111 of the Revised Code, and any other sections or chapters of the Revised Code the principle purpose of which is environmental protection, any Federal or local counterparts or extensions of those sections or chapters; Adopted Rules, terms or conditions of orders, permits, licenses, license renewals, variances, exemptions, or plan approvals issued under such sections, chapters, counterparts or extensions.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
May penalties be assessed before a final determination that disclosure was voluntary?	No	N/A ⁶	No	Not specified	Not specified
	Remedial Actions				
Must the owner/operator take remedial action for immunity to apply?	Yes	Yes	Yes	Yes	Yes
Must nature of remedial action be specified to regulatory agency?	No	Yes, in brief description of proposed actions	No	No	No
Time frame for remedial action to occur?	Promptly. Within a reasonable time for permit application	Within 90 days after report received by Commissioner, or if incapable within 90 days, in accordance with approved performance schedule	As quickly as practicable or within such period as is reasonably ordered by the Director of the govt. agency that has jurisdiction	“Within a reasonable time”	Not specified
Good faith or Due diligence standard for remedial action?	Yes, good faith effort to achieve compliance; Compliance pursued with due diligence	Not specified	“Reasonable good faith effort”	Yes, Remediation must be pursued with due diligence.	Yes, must initiate action and correct the violations in a diligent manner.

⁶ (Minnesota) See supra note 2. There is a 90-day period of deferred enforcement.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Proof that corrective action was taken required as a follow up?	No	Yes, the owner/operator of the facility must certify to the Commissioner that the violations have been corrected.	No	No	No
Is regulated entity required to undertake steps to prevent the recurrence of violation?	No	Yes, must be described in the report submitted to the Commissioner.	No	No	No
C: EXCEPTIONS TO IMMUNITY					
Does immunity apply when:	Disclosed Violations: General Issues				
(A) Injunctive relief has been granted due to violation?	Presumably yes	Presumably yes, unless to enjoin an imminent threat to human health and the environment	Presumably yes	Presumably yes	Presumably yes
(B) Violation results in an economic benefit or competitive advantage for the violator?	Yes	Yes	Yes	No, if violation resulted in a substantial economic benefit which gives violator a clear business advantage	Yes
(C) Violations are required to be reported?	Not specified	Not specified, but presumably yes	No	Presumably yes, unless disclosure is a report to a regulatory agency required solely by condition of enforcement order or decree.	No, if required by state law to be reported

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(D) Violation is either under investigation / or discovered by an enforcement agency before it is reported?	Yes, if not aware of the investigation / Not specified	Not specified / No	No, if disclosing party knows or has reason to know about the investigation or enforcement action	No	Not specified
(E) Violation is reported after an inspection or information request by federal, state, or local agency?	Not specified but presumably yes	Not specified, but presumably yes, unless violation discovered by State during inspection	No, if government agency has commenced an investigation or enforcement action , and disclosing party knows or has reason to know about it.	Not specified but presumably yes if not part of an investigation of the violation disclosed	Not specified but presumably yes
	Previous Violations:				
Specific exception to immunity when, before voluntary disclosure:	Civil and Administrative				
(A) A previous environmental violation had occurred?	No	Yes, if there was a notice of violation	Yes, if immunity was received under this section for a disclosed violation.	No	No
(B) Previous environmental violation resulted in a compliance action?	Yes, if found by court or ALJ to have committed serious violations that constitute a pattern	Yes, if civil lawsuit resulted in compliance action	N/A	Yes, if after effective date of this act, person is found by court or ALJ to have committed significant violations and not to have attempted to bring facility into compliance, so as to constitute a pattern	No

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(C) Compliance action resulted in imposed penalty?	N/A	Yes, if administrative penalty order (see supra Note 4)	N/A	N/A	No
Must the previous occurrence, action or penalty have concerned a same / similar violation as one voluntarily disclosed?	No	Yes	No	No	N/A
Must the previous occurrence, action or penalty have concerned the same facility as the violation voluntarily disclosed?	Yes	Yes	No	Yes	N/A
Time-frame for previous occurrence, action or penalty to affect immunity?	3-year period prior to date of disclosure	1-year	Within the previous year before disclosure	Any 3-year period after effective date of Act	N/A
Specific exception to immunity when, before voluntary disclosure:	Criminal				
(A) An environmental criminal act had occurred?	No	Yes, if there was a notice of violation	No (because, exception occurs if immunity received within the past year, and no immunity for disclosed criminal violations).	No	No

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(B) Previous environmental criminal act resulted in a compliance action?	Yes, if found by court or ALJ to have committed serious violations that constitute a pattern	Yes, if civil lawsuit resulted in compliance action (If compliance action resulted in a penalty, see supra Note 4)		Yes, if after effective date of this act, person found by court or ALJ to have committed significant violations and not to have attempted to bring facility into compliance, so as to constitute a pattern	No
Must the previous criminal act or enforcement action have concerned the same or similar violation as the one voluntarily disclosed?	No	Yes	N/A	No	N/A
Must the previous criminal act or enforcement action have concerned the same facility as the violation voluntarily disclosed?	Yes, if part of a pattern.	Yes	N/A	Yes	N/A
Time-frame for previous criminal act or enforcement action to affect immunity?	3-year period prior to date of disclosure	1-year	N/A	Any 3-year period after effective date of Act	N/A
	State of Mind; Scierter				
Does Immunity Apply When Violation was:	Civil Violations				

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(A) Negligently committed?	Presumably yes	Presumably yes	Presumably yes	Yes	Yes
(B) Recklessly committed?⁷	Presumably yes	Presumably yes	Presumably yes	No ⁸	Presumably yes
(C) Reckless with a total disregard for human health or safety?	Presumably yes	Presumably yes	Presumably yes	No ⁸	Presumably yes
(D) Intentionally or knowingly committed?	Presumably yes	Presumably yes	Presumably yes	No ⁹	No
Does Immunity Apply When Violation was:	Criminal Violations				

⁷ Recklessness involves a greater degree of fault than negligence, but a lesser degree of fault than intentional wrongdoing. Reckless is equivalent to gross negligence.

⁸ (Texas) Immunity also does not apply if the violation was committed recklessly by a member of the person’s (who disclosed the violation) staff or an agent of the person, and the person’s policies or lack of a prevention system contributed materially to the occurrence of the violation, and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property or the environment. Also if responsible within the meaning of Sec. 7.02 Texas Penal Code.

⁹ (Texas) Immunity also does not apply if violation was committed intentionally or knowingly by a member of the person’s management or an agent of the person, and the person’s policies or lack of a prevention system contributed materially to the occurrence of the violation. Also if responsible within the meaning of Sec. 7.02 Texas Penal Code.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
(A) Criminally negligent?	Yes	Presumably yes	No	No (No criminal immunity)	Yes
(B) Criminally reckless? ¹⁰	No	Presumably yes	No	No (No criminal immunity)	Presumably yes
(C) Intentionally or knowingly committed?	No	No	No	No (No criminal immunity)	No
Serious / Imminent and Substantial Endangerment					
Does immunity apply when a violation is serious ?	Yes, unless part of a pattern of serious violations	No	Presumably yes	No	No
Is serious defined?	No	No	No	“Injury to one or more persons at site or off-site substantial actual harm to persons, property or the environment”	“Significant environmental harm or a public health threat was caused by the violation”
Is definition of serious implicit or explicit in statute/law?	N/A	N/A	N/A	Implicit	Implicit
If serious not defined, within what context is term used?	No immunity if serious violations that constitute a pattern	“Serious harm to human health or environment”	N/A	N/A	N/A

¹⁰ Gross negligence so extreme that it is punishable as a crime.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Does immunity apply if violation caused imminent and substantial endangerment?	Presumably yes	State can bring an enforcement action to enjoin an imminent threat to public health or the environment.	Not specified	No	Not specified
Is imminent and substantial endangerment defined?	N/A	No	N/A	No	N/A
Imminent and substantial endangerment to what?	N/A	Imminent threat to public health or the environment	N/A	Imminent or substantial risk of serious injury to persons at site, or risk of harm to persons, property or environment	N/A
	Pattern of Environmental Violations				
Does immunity apply when violations constitute a pattern ?	No, if pattern of serious violations	Presumably yes	Presumably yes	No	Presumably yes
What constitutes a pattern ?	Continuous or repeated violations due to separate or distinct events	N/A	N/A	Series of violations due to separate and distinct events	N/A
Within what time frame is a pattern established?	Within 3 years prior to date of disclosure	N/A	N/A	Within a 3-year period	N/A

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Does 'pattern' require the violation at issue or one substantially similar to have been repeated?	No, unless pattern demonstrated by multiple settlement agreements, and violations are serious	N/A	N/A	No	N/A
Must violations have occurred at the same facility?	Yes	N/A	N/A	Yes	N/A
Does pattern of violations include multiple settlement agreements related to the same alleged violation?	Yes, if agreements concern serious violations within the 3 year period	N/A	N/A	No	N/A
Does pattern of violations include multiple violations of settlement agreements?	Yes	N/A	N/A	No	N/A
	Consent Decrees				
To achieve compliance, must violator enter into consent decree with regulatory agency after voluntary disclosure?	No	No ¹¹	No, but must cooperate with Director in investigation of issues disclosed	No, but must cooperate with agency in investigation of issues disclosed	No, but must cooperate with agency in investigation of issues disclosed

¹¹ (Minnesota) Owner/operator does not have to enter into a consent decree, but must sign a commitment to correct violations as expeditiously as possible under the circumstances. Also, if remedial action not possible within 90-days, a performance schedule must be submitted to and approved by Commission.

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Does immunity apply if the consent decree required after voluntary disclosure is violated?	N/A	No	No (must cooperate for disclosure to be voluntary)	No (must cooperate to make disclosure voluntary)	No (must cooperate for immunity to apply)
Does immunity apply if a consent decree has been violated prior to voluntary disclosure?	No, if violation is serious AND is part of a pattern of serious violations	Yes, subject to conditions ¹²	Presumably yes	Presumably yes	Presumably yes
Can consent decree still be mandated even with a voluntary disclosure?	Not specified	Yes	Not specified	Not specified	Not specified
Does immunity apply if violation found pursuant to complying with the terms of a consent decree? ¹³	Presumably yes	Presumably yes	Yes, unless disclosure required by decree	Yes, unless disclosure required solely by specific condition of decree	Presumably yes
Mitigation of Penalties					

¹² (Minnesota) If it has been less than 1 year since the final resolution of a notice of violation, or administrative penalty order, or a civil or criminal lawsuit, that resulted in an enforcement action being taken against the owner/operator of a facility, for a similar violation as the one disclosed, a civil or administrative enforcement action can be brought which can involve a penalty under Mn. Statutes Secs. 115.071 (Civil) or 116.072 (Administrative).

¹³ This question only addresses the preclusion of immunity if violation is found pursuant to complying with the terms of a consent decree. The violator still has to satisfy the State’s specified immunity requirements for immunity to apply.

II: Enacted Legislation Regions V - VII

STATE / REGION	Michigan R V	Minnesota R V	Ohio R V	Texas R VI	Kansas R VII
Are imposed penalties not subject to immunity, nevertheless subject to mitigation?	Yes, if good faith effort made to disclose and resolve violation, Civil penalties subject to mitigation	Yes, State must take into account the good faith efforts of regulated entity to cooperate in deciding what action to pursue or penalty to impose	Not specified	Yes, factors to be considered in mitigation specified	Not specified
D: STATE ISSUES					
Does immunity apply in case of state primacy, where immunity will result in a state program less stringent than federal program?	Not specified	Not specified	Not specified	Not specified	Not specified
Statute / law void after certain date? (Sunset provision)	A report on effectiveness of the Act is due within 5 years of March 18, 1996.	Act repealed July 1, 1999. A report evaluating the program and recommending if it should be extended due by January 15, 1999.	January 1, 2001	No	No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
A: GENERAL STATUTORY PROVISIONS								
Immunity Statute	Co. Rev. Stat. 13-25-126.5; 25-1-114.5 (1994)	Montana Code Annotated, Titles 75 and 80 "Voluntary Environmental Audit Act"	Senate Bill 24 amends Ch. 1-40 of Code (1996)	Wyo. Stat. 35-11-1106 (1995)	Utah Code Ann. 19-7-109 (1996)	Title 40 Nevada Revised Statutes, Sections 1 to 13	Alaska Statutes Sec. 09.25.450, 09.25.475 thru 09.25.490	Idaho Code Ch. 8, Title 9-809 (ID ALS 359) (1995)
Effective Date	June 1, 1994	May 5, 1997	March 8, 1996	February 18, 1995	April 29, 1996	July 5, 1997	May 11, 1997	July 1, 1995
	Voluntary Defined							
Does immunity depend on voluntary disclosure?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Voluntary disclosure to whom?	Any Division or Agency within the Department of Health	The Department, defined as, "The Departments of Justice, Agriculture or Environmental Quality"	Department of Environmental Quality Secretary	Department of Environmental Quality	Department of Environmental Quality	Appropriate Regulatory Agency, as defined in the Act	Commissioner's Office of the Department of Environmental Conservation	"The appropriate environmental agency"
Voluntary disclosure within what time period?	"Promptly after knowledge of information is obtained"	Within 30 days of discovery	30 days after violation	60 days from audit completion	Within 10 days of discovery of the violation	To be specified in a written agreement between the regulated person and the regulatory agency	Promptly after knowledge of the information disclosed is obtained by owner/operator	"In a timely manner"

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Form the voluntary disclosure must take?	Not specified	In writing	In writing to Department of Environmental Quality Secretary	Not specified	In writing	To be specified in a written agreement between the regulated person and the regulatory agency	In writing by certified mail to the Department or municipality with enforcement jurisdiction	Environmental Audit Report
Who has burden for proving or disproving that disclosure was voluntary ?	Any Division or Agency within the Department of Health	Not specified	Not specified	Not specified	Not Specified	(For administrative and civil penalties only), The regulated person has the burden of establishing disclosure met requirements of Sec. 9.1 of Act. / The Regulatory Agency has burden of rebutting presumption against liability	The Department or municipality	Rebuttable presumption that disclosure is voluntary w/ prima facie showing
Standard of proof for rebuttal of presumption that disclosure was voluntary?	“Satisfactory showing” that disclosure was not voluntary	N/A	Not specified	N/A	N/A	Prima facie case / Preponderance of the evidence	Not specified	Not specified

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Elements of prima facie case for “voluntary” specified?	Yes	No	No	No	No	Yes (Sec. 9.1 of Act)	Yes	Yes
Environmental Audit Requirements								
Must the knowledge of the violation have come from an environmental audit/assessment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Must audit be completed within a specified time?	Within reasonable period of time	No	Not specified	180 days	No	Yes, to be specified in a written agreement between the regulated person and the regulatory agency	Within a reasonable time, but no longer than 90 days unless agreed upon by owner/operator and the Department	No
Good faith standard for environmental audit performance?	Yes	No	Not specified but presumably yes (No immunity if entity intentionally misrepresented material facts concerning disclosed violations)	No	Not specified but presumably yes	Yes, the presumption against liability for civil or administrative penalties is rebutted if audit was conducted for a fraudulent purpose	No ¹	No

¹ (Alaska) There is a due diligence standard that encompasses the regulated entity's systematic efforts to detect violations. The environmental audit is a systematic review by the regulated entity of the facility's operations related to meeting environmental requirements.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Good faith standard for environmental audit disclosure?	Not specified but presumably yes	No	Not specified but presumably yes	No	Not specified but presumably yes	Yes, the presumption against liability for civil or administrative penalties is rebutted if audit was conducted for a fraudulent purpose	No	No
Does immunity apply if audit report fraud or misrepresentation occurs?	Presumably No. Person or entity making disclosure must cooperate with Department of Health in investigation of disclosed issues.	Not specified, but presumably No. The regulated entity must cooperate with the Department and provide information that is necessary to implement the Act	No	Not specified but presumably No (Audit is designed to improve compliance with the Act)	No	No. Immunity (from civil and administrative penalties) and mitigation (of criminal penalties) depends on voluntary disclosure in accordance with the written agreement	Not specified, but presumably No. The owner/operator must cooperate with the appropriate agency in investigation of disclosed issues	Not specified but presumably No (Must make immediate efforts to achieve compliance for disclosed violations)
Uninterrupted or continuous auditing specifically prohibited?	Yes	No	Yes	Yes	No	Not specified, but presumably yes (written agreement required)	No, but for immunity to apply, audit / audit report must be completed in a reasonable / timely manner	No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity depend on notification that an environmental audit was to take place?	No	No	No	No	No	Yes	Yes, notice must be given at least 15 days before audit is conducted. Form and content of notice specified in Act	No
B: IMMUNITY: GENERAL APPLICABILITY								
To whom does immunity apply?	“Any person or entity”	The regulated agency or its agent acting within the scope of the agent’s authority	Regulated entities	Owner/operator of facility	Regulated entities (Those subject to regulation under Title 19, Environmental Quality Code)	Regulated person, defined as the owner or operator of a regulated facility	The owner or operator of a facility (as defined in the Act)	“Person” w/extensive definition, including government agency, or “any other legal entity.” (See 9-803 (6))
Is Immunity Provided from:	Extent of Immunity Provided							
(A) Administrative penalties?	Yes	Yes	No	Yes	No	Yes	Yes ²	Yes

² (Alaska) Immunity applies to the violation disclosed, for a violation based on the facts disclosed, and for a violation discovered because of the disclosure that was unknown to the owner/operator making the disclosure.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(B) Civil penalties?	Yes	Yes	Yes	Yes	Yes	Yes	Yes ²	Yes
(C) Criminal penalties?	Yes	No	Yes	No	No	No, mitigation only	No	Yes
(D) Injunctive relief?	No	No	No	Yes, but injunctive relief can be reasserted under W.S. 35- 11-115	No	No	No	No
(E) Other actions?	Fines	No	No	No	No	No	No (Immunity specifically does not apply to technical or remedial provisions ordered by a government agency)	No
Is Immunity Provided for a Violation of:								
(A) Administrative orders?	Yes	No	No	Not specified but presumably yes	No	No	No	No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(B) Administrative consent decrees?	Presumably No ³	No	No	Not specified but presumably yes	No	No	Not specified, but presumably No	No
(C) Civil Judicial orders?	Yes	No	No	Not specified but presumably yes	No	No	No	No
(D) Civil Judicial consent decrees?	Presumably No ³	No	No	Not specified but presumably yes	No	No	Not specified, but presumably No	No
(E) Permit provisions?	Yes	Yes, if the permit is enforced by the Department	Yes	Not specified but presumably yes	Not specified but presumably yes, if a requirement of environmental law	Yes, if issued under specified sections of the Nevada Revised Statutes ⁴	Yes, if issued under environmental laws	Yes

³ (Colorado) Unless a closure plan under specified environmental law is part of the decree.

⁴ (Nevada) Requirements contained in NRS 444.440 to 444.645; 445A.300 to 445A.730; 445B.100 to 445B.640; 459.400 to 459.856; and 519A.010 to 519A.280, inclusive.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
From which laws, statutes, rules, or regulations is immunity provided?	Specific environmental laws listed under Titles 25 and 30, and regulations promulgated thereunder	Environmental laws or rules enforced by the Department	State or Federal environmental laws, rules, or regulations, enforced by Department of Environmental Quality	Not specified	Environmental laws or requirements	Environmental requirements, defined as: Specified Sections of the Nevada Revised Statutes ⁴ , or any regulations adopted pursuant to those statutes	Environmental laws, defined as: Federal or State environmental laws implemented by the Department, or rules, regulations or municipal ordinances adopted in conjunction with those laws. ⁵	Any state environmental law

⁵ (Alaska) Also disclosures of circumstances, conditions or occurrences that constitute or may constitute a violation of environmental law.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Any enumerated exclusions to provided immunity?	Authority of Environmental Agency to require action associated with info disclosed not effected, except as per Act	The Act does not affect rights or duties that matured, penalties that were incurred, or proceedings that were begun before effective date of Act. Also, an audit can not be used to prevent Department from carrying out its functions	Audit may not be used to prevent statutory or regulatory functions of Department of Environmental Quality	No	No	No criminal immunity, only mitigation. The authority of a regulatory agency to order compliance with the voluntarily disclosed violation is not limited by the immunity or mitigation	The Act can not be construed to prevent the Department from issuing an emergency order in a situation involving imminent or substantial endangerment to public health, welfare or environment	Authority of Environmental Agency to require action associated with violation disclosed not effected, except as per Act
May penalties be assessed before a final determination that disclosure was voluntary?	No	Not specified	Not specified	Not specified	Not specified	Presumably No	Presumably No (Also, during auditing period the Department may not initiate any investigative activity at the facility)	Not specified
	Remedial Actions							
Must the owner/operator take remedial action for immunity to apply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Must nature of remedial action be specified to regulatory agency?	No	Yes, a written compliance schedule must be negotiated between the Department and the regulated entity, unless violation has been resolved to Department's satisfaction at time of disclosure	No	No	No	Yes, the regulated person must enter into an enforceable agreement with the appropriate agency	No, but the department may request, under a claim of confidentiality, the part of the audit report that describes the implementation plan to correct past noncompliance	No
Time frame for remedial action to occur?	Two years after completion of self-evaluation; may be extended upon discretion of Department of Health (reasonable time for permit)	"Promptly"	Within 60 days or, if not possible, a written compliance schedule shall be negotiated between Department and regulated entity.	Within the time frame specified in an order affirmed by the Council or made final pursuant to W.S. 35-11-701(c)(ii)	Within 60 days or, if incapable of remediation within 60 days, then within a "reasonable amount of time"	Not specified, but regulated person must comply with the environmental requirement as soon as practicable	Efforts to achieve compliance and remediation must be initiated promptly, with correction within 90 days. If a longer time is needed, owner/operator must enter into compliance agreement with Department	"Immediately initiates" and achieves compliance within a "reasonable time" after completion of the audit
Good faith or Due diligence standard for remedial action?	Yes, must pursue compliance with due diligence.	Not specified	Not specified	Not specified	Not specified	Not specified	Yes, compliance and remediation must be pursued with due diligence	Yes, must pursue compliance with due diligence.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Proof that corrective action was taken required as a follow up?	No	Yes. There is no immunity if regulated entity has not followed negotiated compliance schedule	No	No	No	Not specified, but regulated person must enter into enforceable agreement with the appropriate regulatory agency in regards to remedial action	No	No
Is regulated entity required to undertake steps to prevent the recurrence of violation?	No	Yes	No	No	Yes; Outline of "reasonable steps" must be submitted in writing to Department of Environmental Quality	Yes, the regulated person must enter into enforceable agreement with appropriate regulatory agency	Yes	No
C: EXCEPTIONS TO IMMUNITY								
Does immunity apply when:	Disclosed Violations: General Issues							

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(A) Injunctive relief has been granted due to violation?	Presumably yes	Presumably yes	Presumably yes	Presumably yes, but injunctive relief possible if disclosure voluntary	Presumably yes	Presumably yes, unless injunction has been violated	Presumably yes	Presumably yes
(B) Violation results in an economic benefit or competitive advantage for the violator?	Yes	Yes	Yes	Yes	No, Department may seek a civil penalty to recover any economic benefit.	The presumption of immunity is rebutted to the extent a significant economic benefit resulted from violation. That a regulated person obtained an actual economic benefit is considered in determining mitigation of criminal penalty	No, but only to extent of economic benefit, if after taking into account reasonable mediation measures, substantial economic savings were realized	Yes
(C) Violations are required to be reported?	No	No, if the environmental audit is required by law, rule or permit	No	No	Not specified but presumably No	Not specified, but presumably yes, if pursuant to written agreement with appropriate regulatory agency	No	No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(D) Violation is either under investigation / or discovered by an enforcement agency before it is reported?	Not specified	No, if an investigation or administrative or judicial proceeding regarding the violation is initiated by the Department before the date of the audit	Not specified / No	No / Not specified but Presumably No	No, if regulated entity had been advised/aware of investigation / No	The presumption against administrative or civil liability is rebutted to the extent the violation was disclosed after the commencement of an independent inspection/ investigation, or the commencement of an administrative proceeding or civil or criminal action . The criminal penalty mitigation considers if any inspection/investigation has commenced, as well as if administrative, civil or criminal proceedings have commenced before disclosure.	No	Not specified
(E) Violation is reported after an inspection or information request by federal, state, or local agency?	Not specified but presumably yes	Not specified but presumably yes	Department may not request results of the audit	Not specified but presumably yes if not part of investigation	Not specified but presumably yes, if not part of investigation entity is advised/aware of	The criminal penalty mitigation considers if any inspection/investigation has commenced, as well as if administrative, civil or criminal proceedings have commenced before disclosure.	Not specified, but presumably yes, unless violation detected by Department during the inspection	Not specified but presumably yes

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
	Previous Violations							
Specific exception to immunity when, before voluntary disclosure:	Civil and Administrative							
(A) A previous environmental violation had occurred?	No	Yes, if previous violations establish a pattern of violating a specific environmental law, rule, regulation, permit, or compliance schedule	No, unless part of a pattern	No	Yes	Yes, if the regulated person conducted a previous audit that disclosed the violation (in question) , and intentionally failed to report that violation	No	No
(B) Previous environmental violation resulted in a compliance action?	Yes, if person or entity is found by court or ALJ to have committed serious violations that constitute a pattern	N/A	No	Yes, if person or entity is found by a court to have committed serious violations that constitute a pattern	N/A	Yes, if either the regulated person or facility has been issued a citation	Yes, if found by a court or ALJ to have committed a pattern of violations	Yes, if person or entity is found by a court to have committed serious violations that constitute a pattern
(C) Compliance action resulted in imposed penalty?	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Must the previous occurrence, action or penalty have concerned a same / similar violation as one voluntarily disclosed?	No	No	No	No	Yes	Yes	Yes	No
Must the previous occurrence, action or penalty have concerned the same facility as the violation voluntarily disclosed?	No	Yes	No	No	No	No	Yes, the same or associated facilities located in the State	No
Time-frame for previous occurrence, action or penalty to affect immunity?	3-year period immediately prior to date of disclosure	3-years before date of current disclosure	Within 2 years before date of disclosure	3-year period prior to date of disclosure	Not specified	Immediately preceding 3 years	36 months preceding the disclosed violation	3-year period immediately prior to date of disclosure
Specific exception to immunity when, before voluntary disclosure:	Criminal							

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(A) An environmental criminal act had occurred?	No	Yes, if previous violations establish a pattern of violating a specific environmental law, rule, regulation, permit, or compliance schedule	No, unless part of a pattern	No	No, because exceptions for similar violations, and no immunity for criminal violations	No	No, because exceptions for similar violations and no immunity for criminal violations	No
(B) Previous environmental criminal act resulted in a compliance action?	Yes, if person or entity found by court or ALJ to have committed serious violations that constitute a pattern	N/A	No	Yes, if person or entity is found by a court to have committed serious violations that constitute a pattern		Yes, in mitigation of the criminal penalty it is considered if either the regulated person or facility has been issued a citation		Yes, if person or entity is found by a court to have committed serious violations that constitute a pattern
Must the previous criminal act or enforcement action have concerned the same or similar violation as the one voluntarily disclosed?	No	No	No	No	N/A	Yes	N/A	No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Must the previous criminal act or enforcement action have concerned the same facility as the violation voluntarily disclosed?	No	Yes	No	No	N/A	No	N/A	No
Time-frame for previous criminal act or enforcement action to affect immunity?	3-year period immediately prior to date of disclosure	3 years before date of current disclosure	Within 2 years before date of disclosure	3-year period prior to date of disclosure	N/A	Immediately preceding 3 years	N/A	3-year period immediately prior to date of disclosure
	State of Mind; Scienter							
Does Immunity Apply When Violation was:	Civil Violations							
(A) Negligently committed?	Presumably yes	Yes	Yes	Yes	Presumably yes ⁶	Yes	Yes	Presumably yes
(B) Recklessly committed?⁷	Presumably yes	No	Presumably yes	No	No	No	No ⁸	Presumably yes

⁶ (Utah) A due diligence standard exists for compliance with environmental laws, with the size and nature of regulated entity taken into account.

⁷ Recklessness involves a greater degree of fault than negligence, but a lesser degree of fault than intentional wrongdoing. Reckless is equivalent to gross negligence.

⁸ (Alaska) If committed or authorized by the owner/operator, or a member of the owner/operator’s management, and the owner/operator’s policies contributed materially to the occurrence of the violation.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
(C) Reckless with a total disregard for human health or safety?	Presumably yes	No	Presumably yes	No	No	No	No ⁸	Presumably yes
(D) Intentionally or knowingly committed?	Presumably yes	No	No	Not specified but presumably No	No	No	No ⁸	Presumably yes
Does Immunity Apply When Violation was:	Criminal Violations							
(A) Criminally negligent?	Yes	No (No criminal immunity)	Yes	No (No criminal immunity)	No (No criminal immunity)	No (No criminal immunity, only mitigation)	No (No criminal immunity)	Presumably yes
(B) Criminally reckless?⁹	No	No (No criminal immunity)	Presumably yes	No (No criminal immunity)	No (No criminal immunity)	No (No criminal immunity, only mitigation)	No (No criminal immunity)	Presumably yes
(C) Intentionally or knowingly committed?	No	No (No criminal immunity)	No	No (No criminal immunity)	No (No criminal immunity)	No (No criminal immunity, only mitigation)	No (No criminal immunity)	Presumably yes
	Serious/Imminent and Substantial Endangerment							

⁹ Gross negligence so extreme that it is punishable as a crime.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity apply when a violation is serious ?	Yes, unless part of a pattern of serious violations	Presumably No	No	Yes, unless part of a pattern of serious violations	No	The presumption against civil or administrative liability is rebutted to the extent it is established violation is serious	Presumably Yes	Yes, unless part of a pattern of serious violations
Is serious defined?	No	Actual substantial damage to human health or the environment	Damage to human health or environment	No	No	No	No	No
Is definition of serious implicit or explicit in statute/law?	N/A	Implicit	Implicit	N/A	N/A	N/A	N/A	N/A
If serious not defined, within what context is term used?	No immunity if serious violations that constitute a pattern	N/A	N/A	No immunity if serious violations that constitute a pattern	Noncompliance resulted in serious actual harm to human health or environmental.	“Violation resulted in serious actual harm”	N/A	No immunity if serious violations that constitute a pattern

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity apply if violation caused imminent and substantial endangerment?	Not specified	Not specified, but presumably No ¹⁰	Not specified	Not specified	No	The presumption against civil or administrative liability is rebutted to the extent it is established the violation presented an imminent or substantial endangerment	No	Remedial action can be required through consent order or court action to abate an imminent hazard
Is imminent and substantial endangerment defined?	N/A	N/A	N/A	N/A	No	No	No	No
Imminent and substantial endangerment to what?	N/A	N/A	N/A	N/A	Human health or environment	Public health or the environment	One or more persons at the audited site, or to persons or property or the environment off-site	Not specified

¹⁰ (Montana) Although **imminent and substantial endangerment** is not addressed in the statute, there is no immunity for a serious violation, and a violation causing imminent and substantial endangerment might be considered a serious violation. **Serious** is not explicitly defined in the statute.

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
	Pattern of Environmental Violations							
Does immunity apply when violations constitute a pattern ?	No, if pattern of serious violations	No	No	No, if pattern of serious violations	Not specified, but presumably No	Presumably yes	No	No, if pattern of serious violations
What constitutes a pattern ?	Continuous or repeated violations due to separate or distinct events	Violations of a specific State or Federal environmental law, rule, regulation, permit, order, or compliance schedule	Repeatedly violating environmental law, regulation, permit, order, or compliance schedule.	Continuous or repeated violations due to separate or distinct events	Recurrence of a similarly caused specific violation (as few as one recurrence)	N/A	(1) Violations that are the same or closely related to the violation for which immunity is sought; or (2) Not attempting to bring the facility into compliance so as to constitute a " pattern of disregard " of environmental laws	Continuous or repeated violations due to separate or distinct events
Within what time frame is a pattern established?	Within the 3-year period prior to date of disclosure	3-years before date of disclosure	Within two years prior to date of disclosure	Within the 3-year period prior to date of disclosure	Not specified	N/A	Within 36 months preceding the disclosed violation	Within the 3-year period prior to date of disclosure

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does 'pattern' require the violation at issue or one substantially similar to have been repeated?	No, unless pattern demonstrated by multiple settlement agreements, and violation is serious	No	No	No, unless pattern demonstrated by multiple settlement agreements, and violation is serious	Presumably yes	N/A	Under pattern definition (1) - yes. Under pattern definition (2) - No	No, unless pattern demonstrated by multiple settlement agreements, and violations are serious
Must violations have occurred at the same facility?	No	Yes	No	No	No	N/A	Under pattern definition (1) - the same facility or associated facilities in the State. Under pattern definition (2) - the same facility	No
Does pattern of violations include multiple settlement agreements related to the same alleged violation?	Yes, if agreements concern serious violations within the 3-year period	Presumably yes	No	Yes, if agreements concern serious violations within the 3-year period	Not specified but presumably yes	N/A	Yes (The multiple settlement agreements demonstrate a pattern)	Yes, if agreements concern serious violations within the 3-year period

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does pattern of violations include multiple violations of settlement agreements?	Yes	Presumably yes	Yes, for compliance schedules	Yes	Yes	N/A	Presumably yes (The multiple violations demonstrate a pattern of disregard)	Yes
Consent Decrees								
To achieve compliance, must violator enter into consent decree with regulatory agency after voluntary disclosure?	No, but must cooperate with Department of Health in investigation of issues disclosed	No, but entity must enter into a negotiated compliance schedule with Department to correct disclosed violations	No, but must negotiate compliance schedule with Department if remedial action not possible within 60 days of disclosure	No	No	Yes. Regulated person must enter into an enforceable agreement with regulatory agency to comply with the environmental requirement, remedy any damage, and take action to prevent recurrence	No, but must cooperate with Department in investigation of issues disclosed	Violator MAY, but is not required to enter into voluntary consent decree; If imminent hazard, decree can be required
Does immunity apply if the consent decree required after voluntary disclosure is violated?	No (must cooperate to make disclosure voluntary)	No	No (If violation not corrected according to negotiated compliance schedule)	N/A	N/A	No (Also considered in mitigation of criminal penalty)	No (Must cooperate to qualify for immunity)	Presumably No

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity apply if a consent decree has been violated prior to voluntary disclosure?	No, if violation of consent decree is part of a pattern of serious violations	Presumably No, if violation is part of a pattern	No, if violation is part of a pattern	No, if violation of consent decree is part of a pattern of serious violations	No, if similar to disclosed violation	No, if the regulated person of facility was specifically required, pursuant to a judicial or administrative order or consent agreement to comply with the disclosed environmental requirement that was violated	No, if violation is part of a pattern	No, if violation of consent decree is part of a pattern of serious violations
Can consent decree still be mandated even with a voluntary disclosure?	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Yes, if disclosed violation can not be corrected within 90-days, the owner/operator must enter into a compliance agreement with the Department or municipality	Yes, for remedial action, except as provided for in statute

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity apply if violation found pursuant to complying with the terms of a consent decree? ¹¹	Yes, unless disclosure required by decree	Presumably yes	Yes, unless disclosure required by decree	No	No	Presumably yes, if pursuant to agreement with appropriate regulatory agency	No	Yes, unless disclosure required by decree
Mitigation of Penalties								
Are imposed penalties not subject to immunity, nevertheless subject to mitigation?	Not specified	Not specified	Not specified	If Federal program requires penalties, mitigation possible if voluntary disclosure	Yes, Department has discretion in reducing penalties for violations not qualifying for immunity	Yes, if a Federal statute or regulation provides for an imposition of a penalty, the voluntary disclosure is, to the extent permitted under the statute / regulation, a mitigating factor	Yes. If immunity not granted because of the provisions of the Act, the penalty can be mitigated taking specified conditions into account, and to the extent not prohibited by law	Not specified
D: STATE ISSUES								

¹¹ This question only addresses the preclusion of immunity if violation is found pursuant to complying with the terms of a consent decree. The violator still has to satisfy the State’s specified immunity requirements for immunity to apply.

III: Enacted Legislation Regions VIII - X

STATE / REGION	Colorado R VIII	Montana R VIII	South Dakota R VIII	Wyoming R VIII	Utah R VIII	Nevada R IX	Alaska R X	Idaho R X
Does immunity apply in case of state primacy, where immunity will result in a state program less stringent than federal program?	Not specified	No immunity if Act would cause State program not to meet delegation requirements, or the Act would prevent State from obtaining primacy	No	No, but mitigation of penalty still allowed	Not specified	Not specified	Not specified	Not specified
Statute / law void after certain date? (Sunset provision)	June 30, 1999	October 1, 2001	No	Effectiveness of act reconsidered every two years beginning 1998	No	No	No	December 31, 1997